

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT
Issued to: MURPHY P. HAMILTON 451-36-4529-D1

DECISION OF THE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2271

MURPHY P. HAMILTON

This appeal has been taken in accordance with Title 46 U.S.C. 239(g) and 46 CFR 5.30-1.

By order dated 12 February 1981, an Administrative Law Judge of the United States Coast Guard at Houston, Texas, revoked Appellant's seaman's documents upon finding him guilty of misconduct. The specification found proved in part alleged that while serving as Chief Cook on board SS TEXACO MARYLAND under authority of the document above captioned, on or about November 24, 1979, Appellant, while said vessel was proceeding to anchorage in New York Harbor, did wrongfully assault and batter with a potentially dangerous weapon, to wit: a stateroom metal trashcan, a member of the crew, Robert M. Jannah (also known as Robert I. Muhammed).

The hearing was held at Corpus Christi, Texas, on 20 January 1981.

At the hearing, Appellant elected to act as his own counsel and entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence the testimony of one witness and six exhibits.

In defense, Appellant offered in evidence his own testimony.

After the hearing, the Administrative Law Judge rendered a written decision in which he concluded that the charge and part of the specification had been proved. He then entered an order revoking all documents issued to Appellant.

The entire decision was served on 2 March 1981. Appeal was timely filed on 13 March 1981.

FINDINGS OF FACT

On 24 November 1979, Appellant was serving as Chief Cook on board the SS TEXACO MARYLAND and acting under authority of his

document while the vessel was enroute to anchorage in the port of New York.

Appellant was a relief chief cook under a union contract which had recently reduced the steward and galley staff manning level on Texaco vessels. The Chief Steward, Robert M. Jannah, was also aboard as relief crew. Appellant had been offered the Chief Steward's position, but refused it because the relief would have been of shorter duration, thereby reducing the income he would have realized.

Appellant, on a number of occasions, indicated his dissatisfaction with the Chief Steward to others in the galley. He maintained that he was shouldering an excessive workload due to the incompetence of the Chief Steward, and the Chief Steward's failure to share the increased burden resulting from the reduced manning level on the vessel.

The Master of the vessel was drawn into this controversy by the Chief Steward. The Master cautioned Appellant concerning the remarks he had been making, and reminded Appellant that his position was subordinate to the Chief Steward. Appellant decided to quit the vessel as a result of these events, and went to his room. A short time later, the Chief Steward was on the way to his own room, down the passageway from Appellant's. To reach his room, the Chief Steward had to pass within arm's reach of Appellant, who was standing in the door of his stateroom holding a small metal trash basket. No one else was in the passageway. Seconds after passing Appellant, the Chief Steward suffered a blow to the head which was accompanied by a "popping sound". The cut induced by the blow required four stitches to close, and the Chief Steward was rendered not fit for duty for several days as a result of headaches resulting from the injury.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is urged in general terms that Appellant was denied procedural due process, that evidence was improperly admitted, that the evidence of record is insufficient to justify the decision reached and that the order adjudged is too severe.

APPEARANCE: Although originally represented on appeal by Dodson & Dodson, of Corpus Christi, apparently no substitute counsel was retained by Appellant after that firm withdrew from the proceedings.

OPINION

Appellant filed a notice of appeal stating certain grounds therefore, but no argument on the facts or law was submitted. In consequence, and in order to give reasonable consideration on appeal to one not represented by professional counsel, I have reviewed the entire record carefully in light of the bare assertions of error.

I find that the proceedings below were conducted in full compliance with the regulations governing suspension and revocation proceedings contained in Title 46, Code of Federal Regulations, part 5. Appellant was afforded the entire panoply of due process rights to which he was entitled.

The assertion of error founded on evidentiary matters is equally without merit. The evidence in this case consisted of the testimony of the Chief Steward and Appellant and some reports related to the occurrence and extent of Jannah's injury. Under the relaxed rules governing evidence in these administrative proceedings, all of these were admissible and probative. 46 CFR 5.20-95, 100. The mere fact that the live testimony was contradictory does not reduce the quantum of substantial and reliable evidence adduced in this case below that necessary to satisfy the burden of proof in these proceedings. 46 CFR 5.20-95(b), 5.20-77. It is well settled that the presiding Administrative Law Judge may quite properly resolve issues of credibility in testimony presented before him. Appeal Decision Nos. 2115, 2018 and 911. The evidence adduced was sufficient to meet the regulatory standard of proof in these proceedings and justified the findings of the Administrative Law Judge. I note, additionally, that a reasonable inference may be drawn from the evidence that the Chief Steward was struck with a metal trash basket. However, the Administrative Law Judge determined that the evidence was not sufficient on this point, an exercise of caution and discretion which is not clearly erroneous, and which I will not disturb on appeal.

Appellant's final argument is directed to the severity of the remedial order. Appellant pleads the hardship which revocation of his document would work on his family. Such hardship is a natural consequence foreseeable to any reasonable seaman who would engage in the conduct underlying this proceeding. Appellant, particularly, should have been aware of this, since his document has been the subject of two prior suspensions and one prior revocation. Based on Appellant's record, and after consideration of the circumstances of the present case, I am convinced that a proper remedial order was rendered. See Appeal Decision 2145.

CONCLUSION

This R.S. 4450 proceeding was properly conducted and resulted in the entry of an appropriate remedial order.

ORDER

The order of the Administrative Law Judge dated at Houston, Texas, on 12 February 1981, is AFFIRMED.

J. B. HAYES
Admiral, U.S. COAST GUARD
Commandant

Signed at Washington, D.C., this 2nd day of March 1982.